

# Direct Deductions from Universal Credit

**The introduction of Universal Credit (UC) brought changes to the amount of direct deductions, which can be made from a claimant's benefit award. On the whole, higher rates of deduction can be made compared with deductions from 'legacy' benefits. Sandie Lock looks at the main changes and some options for challenging adverse decisions.**

## CONSENT

The client's consent is only required for deductions from UC in respect of direct payments (including arrears) of fuel costs and water charges, where the total amount deducted for these payments exceeds 25% of the client's UC standard allowance and child elements.<sup>1</sup> Otherwise deductions can be made from UC without the client's consent.

However, there may still be grounds to challenge the rate of the deductions by mandatory reconsideration/appeal (in some circumstances) or by asking the DWP to exercise their discretion.

## THIRD PARTY DEDUCTIONS

The standard rate of deduction is 5% of the client's UC standard allowance but note the exceptions below.

### Rent arrears

A major problem area has been around deductions being made from UC for rent arrears. Deductions can be made from UC if a client is in debt with their rent (including any water, service or other charges included in it) and still occupies the premises to which the rent applies.

The DWP has been telling UC claimants that they cannot make direct deductions for rent arrears of less than 20% of the claimant's UC standard allowance, even where a court has decided that a repayment rate of £5 per week is reasonable. Unfortunately, social security law provides for deductions at a rate higher than a court order.

Regulation 60 and schedule 6, paragraph 7 of the UC, PIP, JSA and ESA (Claims and Payments) Regs 2013 (SI 2013/380) state that the DWP "may" (not must) make deductions of between 10% and 20%, thus implying it is discretionary and so the DWP could decide not to make the deductions or to make them at the lower rate if, for example, the client could show hardship. The decision about the rate of deduction should also carry a right of appeal, as it isn't specifically listed under: "Decisions against which no appeal lies."<sup>2</sup>

Therefore, advisers should:

- challenge the DWP's decision to impose a 20% UC deduction;
- submit evidence of the client's personal circumstances eg other debts or details of extra expenditure due to disability needs\*;
- consider appealing the decision and making a complaint if the DWP appears to be acting unreasonably.

\*[DWP guidance<sup>3</sup> from 2014, which was obtained via a freedom of information request, suggests that hardship may be considered if the client has expenses due to caring responsibilities, ill health/sickness,

risks losing their home or job, has dependent child(ren) or any other exceptional circumstances eg purchase of a washing machine on credit. If they have savings of £500 or more, and hardship is not due to ill health/sickness, the client will not meet the criteria.]

Deductions cannot be made if the claimant's earned income (or for joint claimants, their combined earned income) exceeds the appropriate work allowance for the previous monthly assessment period.<sup>4</sup> If their earnings equal or exceed the work allowance for the three previous monthly assessment periods, the deductions must cease.<sup>5</sup>

### Other housing costs (owner occupiers)

To have deductions from UC for other 'owner occupier' housing costs eg service charges, the client must be "in debt" with these costs. Also, their earnings (or combined earnings with a partner) must have been below the UC work allowance in the previous assessment period.<sup>6</sup> The deduction rate is 5% of the client's UC standard allowance.

1. Schedule 6, para 3(3) of UC, PIP, JSA and ESA (C and P) Regs 2013 (SI 2013/380)
2. Schedule 3 of the UC, PIP, JSA and ESA (Decisions and Appeals) Regs 2013 (SI 2013/381)
3. UC Continuous Improvement Note 325/14 issued 19/12/14 (internal DWP guidance) – online at [tinyurl.com/sqswr5c](http://tinyurl.com/sqswr5c)
4. Schedule 6, para 7(6) of UC, PIP, JSA and ESA (Claims and Payments) Regs 2013 (SI 2013/380)
5. Schedule 6, para 7(7) of UC, PIP, JSA and ESA (C and P) Regs 2013
6. Schedule 6, para 6(4) of UC, PIP, JSA and ESA (C and P) Regs 2013

## Fines

Reg 4 of Fines (Deductions from Income Support) Regs 1992 (SI 1992/2182) was amended<sup>7</sup> in 2013 to allow for certain deductions to be made from Universal Credit. Reg 4(1A) now states:

*“(1A)...where the Secretary of State receives an application from a court in respect of an offender who is entitled to universal credit, the Secretary of State may deduct from the universal credit payable to the offender an amount permitted by paragraph (1B) and pay that amount to the court towards satisfaction of the fine or the sum required to be paid by compensation order.*

*(1B) The amount that may be deducted under paragraph (1A) is any sum which is no less than 5 per cent of the appropriate universal credit standard allowance for the offender for the assessment period in question under regulation 36 of the UC Regulations but no greater than £108.35.”*

As this provision states that the Secretary of State “may” deduct an amount from UC, this means that the decision is discretionary, ie the DWP does not have to make any deduction at all. If they do decide to make a deduction, then the amount must not be less than 5% of the standard UC allowance, and it must not be more than £108.35. So the DWP can decide whether to make a deduction and if they do decide to make a deduction, it must be for an amount between those two figures.

The DWP cannot normally reduce a claimant’s standard allowance by more than 30% altogether (ie including any other debts which are being repaid) but that figure is a maximum amount, so the DWP can deduct a lesser amount if they wish.

The maximum rate for deductions was reduced from 40% with effect from October 2019 (as announced in the Budget 2018) and is due to

reduce to 25% from October 2021. However, although the maximum rate is currently given as 30% in the online DWP guidance<sup>8</sup> the legislation<sup>9</sup> itself has not yet been amended.

So a client can ask the DWP to either not make a deduction for the fine at all, or ask that they reduce the amount deducted for the fine to the lowest figure of 5% of the UC standard allowance. (Unfortunately, if the DWP refuses to change the deduction, the client does not have a right of appeal<sup>10</sup> so is merely left with submitting a complaint or potentially taking judicial review action against them.)

## Fuel costs/water charges<sup>11</sup>

If a client has gas or electricity debts (including reconnection or disconnection charges), or water and sewerage charge debts (including reconnection charges) the DWP can make deductions from UC at 5% of the client’s standard monthly allowance plus an additional amount, which they consider to equate to the average monthly fuel costs (unless the client pays by other means, such as a prepayment meter) or the continuing monthly water costs. (Being “in debt” is defined as having arrears of at least 25% of the UC standard allowance.)

This only applies if the client’s earnings (or combined earnings with a partner) for the previous UC assessment period, are below their work allowance. However, if their earnings (or combined earnings with a partner) equal or exceed the work allowance for three monthly assessment periods, the deductions must cease.<sup>12</sup>

This appears to be a discretionary decision, so clients can ask for fuel and water charges not to be deducted. However, DWP guidance suggests that they will not consider stopping direct payments for fuel just because a claimant wishes to take control of their own budgeting,<sup>13</sup> and that they will

always take 5% of the UC standard allowance towards water arrears, even if there is a court order for a greater amount or the claimant asks that a higher amount be paid direct.<sup>14</sup>

## Council tax arrears

Deductions can be made for council tax arrears if the local authority obtains a liability order from a magistrates’ court and applies to the DWP for recovery from the client’s UC.<sup>15</sup> Deductions can be made (at 5% of the standard allowance) for arrears and any unpaid costs or penalties imposed.

## Loans

Deductions can be made from UC (at 5% of the client’s UC standard allowance) for “eligible loans” (made by certain not-for-profit lenders, such as community development financial institutions, credit unions and charities), if the client has not kept up with the repayments and is in arrears. The loan must be unsecured, not made for business purposes and not made by credit card.<sup>16</sup>

For UC, when taking out the loan, the client does NOT need to have given their consent for the lender to contact the DWP regarding direct deductions.

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7. Fines, Council Tax and Community Charges (Deductions from UC and Other Benefits) 2013 (SI 2013/612)
  8. [tinyurl.com/r5s4mjl](http://tinyurl.com/r5s4mjl)
  9. Schedule 6, para 4 of UC, PIP, JSA and ESA (Claims and Payments) Regs 2013 (SI 2013/380)
  10. Schedule 3, para 10 of UC, PIP, JSA and ESA (Decisions and Appeals) Regs 2013 (SI 2013/381)
  11. Advice for Decision Making (ADM) para D2130 and D2165
  12. Schedule 6, paras 8(5) and (6) and 9(4) and (5) of UC, PIP, JSA and ESA (C and P) Regs 2013
  13. ADM para D2153
  14. ADM para D2178
  15. Council Tax (Deductions from Income Support) Regs 1993 (SI 1993/494)
  16. Schedule 6, para 11 of UC, PIP, JSA and ESA (C and P) Regs 2013

## Integration loans

Deductions can also be made at 5% of the standard UC allowance in order to repay an integration loan (ie loans granted to refugees and people granted humanitarian protection).<sup>17</sup>

## Child support maintenance

Deductions must be made from UC in respect of certain payments the client is liable to make in place of child support maintenance. The amounts vary depending on when the child support application was made, for example, under the 2012 rules scheme, deductions for arrears are made at the flat rate of £8.40 per week.<sup>18</sup>

## OTHER DEDUCTIONS

Other amounts can be deducted from a client's UC award, although these are in relation to debts owed to the DWP and not to other third parties. The client's consent is not therefore required, but there are other rules which govern these types of payments.

## Social fund repayments

Budgeting loans (usually only payable to people in receipt of 'legacy' benefits) can still be recovered from UC should the client move onto UC. The client must consent to the agreed terms of recovery before the loan is made.<sup>19</sup> Should the agreed terms of repayment become difficult, the client can re-negotiate repayment terms with the DWP, but there is no right of appeal.

## Budgeting advance in UC

Budgeting advances (the equivalent of budgeting loans in legacy benefits) are available to clients in receipt of UC.<sup>20</sup> Repayment of budgeting advances is usually made by deduction from UC. There are maximum amounts of recovery, depending on the client's circumstances - these are the same as the maximum rates of recovery which apply to overpayments (see below) so these can again be negotiated but there is no right of appeal.<sup>21</sup> The advance

is normally repayable over 12 assessment periods, which can be extended by up to a further six assessment periods.<sup>22</sup>

## Short term benefit advances

UC (or some legacy benefit claimants) may qualify for a short-term advance payment if there is a delay in deciding their claim or a delay in being paid, and the DWP accepts that they are in 'financial need'. Repayment is again subject to maximum amounts of recovery (as for those for overpayments - see below), so these can be negotiated. There does appear to be a right of appeal against the decision to make deductions from UC and the rate of the deduction.<sup>23</sup>

## Overpayments

Overpayments of 'legacy' benefits, UC and some overpayments of tax credits<sup>24</sup> can be recovered by deduction from UC.<sup>25</sup> There are set maximum rates, so negotiation can be made to the rates of recovery, but there is no right of appeal if the DWP refuses.<sup>26</sup>

The maximum rates of recovery are:

- 30% of the UC standard allowance if the client has been found guilty of an offence, has accepted a caution or agreed to pay a penalty as an alternative to prosecution;
- 25% of the UC standard allowance if the client has earnings taken into account in their UC claim;
- 15% of the UC standard allowance in all other cases.

The maximum rate of recovery was reduced to 30% from 40% with effect from October 2019 (as announced in the Budget 2018). However, although the maximum rate is currently given as 30% in the online DWP guidance<sup>27</sup> the legislation itself<sup>28</sup> has not yet been amended.

Overpayments of Housing Benefit can also be deducted from UC and the DWP must make deductions if requested to do so

by the local authority.<sup>29</sup> There are no set amounts of recovery, so negotiation over the rate of repayment is possible.

UC overpayments are always recoverable, but the DWP has the discretion not to seek recovery if that will cause hardship.

If a client has a tax credit overpayment and is now claiming UC in the same tax year, the overpayment may instead be deducted from their UC.<sup>30</sup>

## MULTIPLE DEDUCTIONS

More than one deduction can be made from the client's UC provided they are left with at least one penny UC entitlement.<sup>31</sup>

No more than three of the following (third party) deductions can be made from UC at the same time:<sup>32</sup>

- other housing costs;
- rent arrears;
- fuel debts;
- water charges;
- repayment of eligible loans;
- repayment of integration loans;

17. Sch 6 para 12 of UC etc (C and P) Regs 2013

18. Sch 7 para 3 of UC etc (C and P) Regs 2013

19. Social Fund (Budgeting Loans) (Application and Misc Provisions) Regs 2015 (SI 2015/1411)

20. Social Security (Payments on Account of Benefit) Regs 2013 (SI 2013/383)

21. Sch 3 para 14 and 15 UC etc (Decisions and Appeals) Regs 2013 (SI 2013/381)

22. [tinyurl.com/u4jea6j](http://tinyurl.com/u4jea6j)

23. Sch 3 para 14 UC etc (D and A) Regs 2013 and Reg 10 of SS(PAB) Regs 2013

24. Reg 12 UC (TP) Regs 2014

25. Reg 3 Social Security (Overpayments and Recovery) Regs 2013 (SI 2013/384) and Reg 16(7A) and (7B) Social Security (Payments on Account, Overpayments and Recovery) Regs 1988 (SI 1988/664)

26. Sch 3 para 15 UC etc (D and A) Regs 2013

27. [tinyurl.com/r5s4mjl](http://tinyurl.com/r5s4mjl)

28. Reg 11 of Social Security (Overpayments and Recovery) Regs 2013 (SI 2013/384)

29. Reg 105(2) Housing Benefit Regs 2006

30. Reg 12 of UC (Transitional Provisions) Regs 2014 (SI 2014/1230)

31. Schedule 6, para 3(1)(a) of UC etc (Claims and Payments) Regs 2013

32. Schedule 6, para 3(1)(b) and 3(2) of UC etc (Claims and Payments) Regs 2013

- council tax arrears;
- fines, costs and compensation orders;

The total amount of deductions from UC cannot normally exceed 30% of the client's UC standard allowance.<sup>33</sup> However, deductions for ongoing costs (as opposed to arrears) of fuel or water charges are disregarded when calculating the total and that maximum can also be exceeded to permit deductions for arrears of "other" housing costs, fuel debts (gas/electricity arrears) and the minimum amount for rent arrears, if the DWP decides it is in the client's best interests.<sup>34</sup>

As above, deductions from UC for direct payments (including arrears) of fuel costs and water charges, where the total amount deducted for these payments exceeds 25% of the client's standard allowance and child elements, can only be made with the client's consent.<sup>35</sup>

### Priority of deductions

If the client's UC award is "insufficient" to meet all the applicable deductions (ie if the total of certain deductions would exceed 30% of the client's UC standard allowance), the following order of priority operates:<sup>36</sup>

- "other" housing costs;
- rent arrears (and related charges) if the amount of the deduction is 10% of the standard allowance;
- fuel;
- council tax arrears;
- fines, if the deduction is 5% of the standard allowance;
- water charges;
- child support maintenance;
- repayment of social fund payments;
- recovery of hardship payments;
- penalties instead of prosecution

33. [tinyurl.com/r5s4mjl](https://tinyurl.com/r5s4mjl)

34. Schedule 6, para 4 of UC etc (Claims and Payments) Regs 2013 (SI 2013/380)

35. Schedule 6, para 3(3) of UC etc (Claims and Payments) Regs 2013

36. Schedule 6, para 5 of UC etc (Claims and Payments) Regs 2013



- for benefit fraud;
- recovery of overpayments of benefits and tax credit overpayments caused by fraud;
- civil penalties for benefits offences;
- recovery of non-fraud overpayments of benefits or tax credits;
- repayment of integration loans;
- repayment of eligible loans;
- rent arrears (and related charges), if the deduction is more than 10% of the UC standard allowance;
- fines, costs and compensation orders, if the deduction is more than 5% of the UC standard allowance.

### An interesting anomaly?

It is arguable that if a client is having deductions for a fine at more than 5% of their UC standard allowance and has two other debts (of higher priority in the above lists), they could be 'better off' by running up arrears eg of electricity, to add a third debt of higher priority, which then means the fine cannot be deducted.

For example:

Client has deductions of 10% (rent) + 5% (council tax) + 15% (fines) = 30%.

If then has fuel debt, the client cannot have more than three of the specified debts so deductions for the fine should cease (as the other

debts are higher priority).

Client now has deductions of 10% (rent) + 5% (council tax) + 5% (fuel) = 20%.

However, I am not suggesting that advising clients to get further into debt would be a good tactic and the fine may still need to be paid.

### STRATEGIES

Where the level of deductions being made from a client's UC causes hardship, the following may be considered:

- challenge the DWP decision on the deduction and/or the rate of deduction;
- submit evidence of hardship to the DWP;
- consider appealing the decision (if it is an appealable decision);
- check the priority of deductions;
- consider applying to the magistrates' court for a fine to be remitted;
- consider making a complaint;
- consider involving the client's MP.

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**Stop Press:** Deductions from benefits for overpayments of tax credits and other benefits and Social Fund loans have been paused for three months during the Covid-19 pandemic.